

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

01/16/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000209

FILED: \_\_\_\_\_

STATE OF ARIZONA

B DON TAYLOR

v.

TERRY RAY GEORGE

KEVIN L BURNS

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5854722

Charge: 1) DUI  
2) FAILURE TO STOP FOR RED LIGHT  
4) NO CURRENT REGISTRATION

DOB: 10/13/62

DOC: 02/23/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the date of Oral Argument on December 19, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, exhibits made of record, and the arguments and Memoranda submitted by counsel.

Appellant, Terry Ray George, was arrested by Phoenix Police and accused on February 23, 2000 of Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving With an Alcohol Content of .10 or Greater, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); Failure to Stop for A Red Light, a Civil Traffic violation, in violation of A.R.S. 28-645(A); No Current Registration, a Civil Traffic violation in violation of A.R.S. Section 28-2532(A); and Extreme Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1382. Appellant entered pleas of Not Guilty to these charges and the case was set for a jury trial which commenced on March 28, 2001. The trial concluded March 30, 2001 and Appellant was found guilty on the charge of Driving While Under the Influence of Intoxicating Liquor, in violation of A.R.S. Section 28-1381(A)(1). Appellant was found Not Guilty of Driving With a .10 Alcohol Content, and Not Guilty on the Extreme DUI charge. The court found appellant responsible for the Red Light violation and Appellant admitted the No Proof of Current Registration charge. Appellant filed a timely Notice of Appeal in this case.

The only issue raised by Appellant on appeal concerns Appellant's objections during jury selection to the State's peremptory strike of juror, Mr. Gilbert, who was of African-American decent.

Appellant's counsel objected:

Because of what I perceived may be an

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improper striking of a juror, and that would have been, I believe, juror #2, your honor, I've got to challenge that strike made by the State as being a racial strike. It appeared to me, and again, I may be wrong, judge, it appeared to me that there was absolutely no response by Mr. Gilbert to any "voir dire questions"; there was nothing to support, in my opinion anyway, a possible peremptory strike based on anything Mr. Gilbert could have said or done. It would only have been appearance and perhaps racial background.<sup>1</sup>

The prosecutor responded to the objection:

I can put the officer on the stand to talk about what we discussed about why I'm striking him. We have- there are a few other jurors on the panel that have the same level of education as Mr. Gilbert. Each one of those has other characteristics, whether it be what they've talked about what their family, what they do for a living, or their background and experience that makes them more palatable as jurors, in a case where there is going to be complicated calculations and retrograde analysis and things like that.

The only thing we know about Mr. Gilbert is that he works for Crown Plaza and he's got 12 years of education. The other people that have a similar degree of education have, as I said, other things; I can go through them if you want me to; which made me feel like they are more appropriate as jurors. I simply struck him because he didn't seem that interested or full of detail when he talked

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<sup>1</sup> R.T. of March 28, 2001 at page 27.  
Docket Code 512

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about his job. He just said, "I work for Crown Plaza." And I was concerned about the level of education, without anything else to make it- make me feel like he was sophisticated enough to understand as much as the other people.<sup>2</sup>

The trial judge denied Appellant's Motion, stating: "Frankly, I think educational background and work history is a racially neutral reason, and I would so rule."<sup>3</sup>

It is clear that despite the trial judge's personal feelings about the "Batson" case<sup>4</sup> that the trial court found Appellant's counsel had made a *prima facie* case of racial discrimination. After a *prima facie* case of racial discrimination has been established, then the proponent of the strike must provide a race-neutral explanation for their strike. If such a race-neutral explanation is given, the trial court must determine whether the party objecting has carried their burden of showing purposeful racial discrimination.<sup>5</sup> Where a discriminatory intent is apparent in the explanation of the strike, the strike must be disallowed. When no discriminatory intent is apparent, the reason offered for the strike will be considered as race-neutral.<sup>6</sup>

The trial judge's decision in overruling Appellant's objection to the prosecutor's strike does not appear clearly erroneous. Educational background and work history are racially neutral reasons for exercising a peremptory strike. Further, the trial judge's factual findings must be given deference by an appellate court because the trial judge was in a better position to evaluate issues of credibility than this appellate court.<sup>7</sup>

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<sup>2</sup> Id. at pages 28-29.

<sup>3</sup> Id. at page 31.

<sup>4</sup> Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed 2d 69 (1986).

<sup>5</sup> Id.

<sup>6</sup> State v. Henry, 191, Ariz. 283, 955 P.2d 39 (App. 1997).

<sup>7</sup> State v. Murray, 184 Ariz. 9, 906 P.2d 542 (App. 1995).

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Thus, this Court concludes that the trial judge did not err in denying Appellant's objection to the prosecutor's peremptory strike of juror #2, Mr. Gilbert.

IT IS ORDERED affirming the judgment of guilt, findings of responsibility, sentences and sanctions imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings.